

**OPINION
58-127**

HEALTH AND SAFETY -- RESTAURANTS -- DEFINITION -- FOOD DISPENSER

Your letter of September 24, 1958, requesting an opinion as to whether or not a store having an electronically controlled machine that heats and serves a weiner and bun commonly known as a "hot dog" when a person deposits a coin in said machine should have a restaurant license, has been received.

You specifically cite subsection 2 of section 23-0901 of the North Dakota Revised Code of 1943 which reads as follows:

2. "Restaurant" includes every building or other structure or any part thereof, and all buildings in connection therewith, kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished.

Section 23-0917 of the North Dakota Revised Code of 1943 reads in part as follows:

"The following annual license fee shall be paid to the state laboratories department by proprietors of hotels, restaurant, boarding houses, and lodginghouse:

1. For a restaurant or boarding house, two dollars and fifty cents;"

It is interesting to note that both of these sections are under the title of health and safety. This would indicate a legislative intent to provide for the health, safety and general welfare of the people by licensing and controlling restaurants and places which serve either meals or lunches.

It is the opinion of this office that the stores which have the coin operated electronically controlled hot dog machines would constitute a restaurant within the meaning of the statute and consequently would be required to pay the \$2.50 license fee required by all restaurants.